

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARRELL J. DEBREW, :
Plaintiff, :
v. : Case No. 3:07-cv-179-KRG-KAP
DOUG AUMAN, UNIT MANAGER at :
F.C.I. LORETTO, et al., :
Defendant :

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on January 7, 2011, docket no. 31, recommending that summary judgment be granted to defendants on defendants' motion, docket no. 27, and that plaintiff's cross motion, docket no. 30, be denied.

The parties were notified pursuant to 28 U.S.C. § 636(b)(1), that they had fourteen days to file written objections to the Report and Recommendation. Plaintiff filed timely objections, docket no. 32, which I have reviewed but reject as insufficient to raise a genuine issue as to defendants' qualified immunity. Although plaintiff's allegations support a First Amendment claim at an extremely abstract level, the qualified immunity inquiry must be undertaken in light of the specific context of the case. Thomas v. Independence Township, 463 F.3d 285, 300 (3d Cir.2006). In the factual context alleged, it would not have been apparent to defendants that they were violating clearly established law in enforcing a no business rule. See

Newland v. Reehorst, 328 Fed Appx. 788 (3d Cir.2009) (affirming dismissal on basis of qualified immunity).


Plaintiff also filed a motion for discovery, docket no. 33, which is unnecessary because defendants have already appeared by counsel.

Upon de novo review of the record of this matter, the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 28th day of January, 2011, it is

ORDERED that defendants' motion for summary judgment, docket no. 27, is granted and plaintiff's motion for summary judgment, docket no. 30, is denied. Judgment is ordered in favor of the defendants. The Report and Recommendation is adopted as the opinion of the Court. Plaintiff's motion for discovery, docket no. 33, is denied. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

Darrell J. DeBrew, Reg. No. 14102-056
F.P.C. Butner
P.O. Box 1000
Butner, N.C. 27509